

Chapter 2

State Engineer - Division of Water Rights

73-2-1 State engineer -- Term -- Powers and duties -- Qualification for duties.

- (1) There shall be a state engineer.
- (2) The state engineer shall:
 - (a) be appointed by the governor with the consent of the Senate;
 - (b) hold office for the term of four years and until a successor is appointed; and
 - (c) have five years experience as a practical engineer or the theoretical knowledge, practical experience, and skill necessary for the position.
- (3)
 - (a) The state engineer shall be responsible for the general administrative supervision of the waters of the state and the measurement, appropriation, apportionment, and distribution of those waters.
 - (b) The state engineer may secure the equitable apportionment and distribution of the water according to the respective rights of appropriators.
- (4) The state engineer shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with the purposes and provisions of this title, regarding:
 - (a) reports of water right conveyances;
 - (b) the construction of water wells and the licensing of water well drillers;
 - (c) dam construction and safety;
 - (d) the alteration of natural streams;
 - (e) geothermal resource conservation; and
 - (f) enforcement orders and the imposition of fines and penalties.
- (5) The state engineer may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with the purposes and provisions of this title, governing:
 - (a) water distribution systems and water commissioners;
 - (b) water measurement and reporting;
 - (c) groundwater recharge and recovery;
 - (d) wastewater reuse;
 - (e) the form, content, and processing procedure for a claim under Section 73-5-13 to surface or underground water that is not represented by a certificate of appropriation;
 - (f) the form and content of a proof submitted to the state engineer under Section 73-3-16;
 - (g) the determination of water rights; or
 - (h) the form and content of applications and related documents, maps, and reports.
- (6) The state engineer may bring suit in courts of competent jurisdiction to:
 - (a) enjoin the unlawful appropriation, diversion, and use of surface and underground water without first seeking redress through the administrative process;
 - (b) prevent theft, waste, loss, or pollution of those waters;
 - (c) enable him to carry out the duties of the state engineer's office; and
 - (d) enforce administrative orders and collect fines and penalties.
- (7) The state engineer may:
 - (a) upon request from the board of trustees of an irrigation district under Title 17B, Chapter 2a, Part 5, Irrigation District Act, or another local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special service district under Title 17D, Chapter 1,

Special Service District Act, that operates an irrigation water system, cause a water survey to be made of all lands proposed to be annexed to the district in order to determine and allot the maximum amount of water that could be beneficially used on the land, with a separate survey and allotment being made for each 40-acre or smaller tract in separate ownership; and

- (b) upon completion of the survey and allotment under Subsection (7)(a), file with the district board a return of the survey and report of the allotment.

(8)

- (a) The state engineer may establish water distribution systems and define their boundaries.
- (b) The water distribution systems shall be formed in a manner that:
 - (i) secures the best protection to the water claimants; and
 - (ii) is the most economical for the state to supervise.

Amended by Chapter 221, 2013 General Session

73-2-1.1 Division of Water Rights -- Creation -- Power and authority.

There is created the Division of Water Rights, which shall be within the Department of Natural Resources under the administration and general supervision of the executive director of natural resources. The Division of Water Rights shall be the water rights authority of the state of Utah and is vested with such powers and required to perform such duties as are set forth in law.

Amended by Chapter 198, 1969 General Session

73-2-1.2 Director of Division of Water Rights -- Appointment of state engineer.

The Division of Water Rights shall be administered by the state engineer who shall act as the director of the Division of Water Rights and who shall be appointed as provided by Section 73-2-1. Nothing contained in this act shall modify, repeal or impair the powers or duties of the state engineer relating to the administration, appropriation, adjudication and distribution of the waters of the state of Utah as are conferred upon him pursuant to Title 73, Water and Irrigation, or the provisions of any other laws.

Enacted by Chapter 176, 1967 General Session

73-2-1.3 Report to executive director of natural resources.

The state engineer shall report to the executive director of natural resources at such times and on such administrative matters concerning his office as the executive director may require.

Enacted by Chapter 176, 1967 General Session

73-2-1.5 Procedures -- Adjudicative proceedings.

Except as provided in Sections 63G-4-102 and 73-2-25, the state engineer and the Division of Water Rights shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

73-2-2 Oath.

- (1) Before entering upon the duties of the office, the state engineer shall take and subscribe the constitutional oath of office.

(2) The state engineer shall file the oath with the Division of Archives.

Amended by Chapter 298, 2010 General Session

73-2-4 Deputy and assistants -- Employment and salaries -- Purchase of equipment and supplies.

For the purpose of performing the duties of his office the state engineer may:

- (1) employ a deputy and all necessary assistants;
- (2) fix division employees' salaries in accordance with salary standards adopted by the Division of Finance; and
- (3) purchase all necessary equipment and supplies.

Amended by Chapter 136, 2007 General Session

73-2-5 Aid to district court.

In aid of the district court the state engineer shall have power to collect facts and make surveys and do all other necessary things, the cost of which shall be paid by the state upon presentation to the director of the Division of Finance of monthly statements and certification by the state engineer.

Amended by Chapter 320, 1983 General Session

73-2-7 Aid to federal court.

The state engineer, when requested by the district court of the United States for the district of Utah, may assist said court in any matter relating to the distribution and use of any of the waters of the state, and may when so requested cooperate with any water commissioner appointed by said court in any such matter.

No Change Since 1953

73-2-10 Knowledge of waterways and irrigation -- Suggestions as to amendment or enactment of laws.

The state engineer shall become conversant with the waterways of the state and its needs as to irrigation matters; and he shall make such suggestions as to the amendment of existing laws or the enactment of new laws as his information and experience shall suggest.

Amended by Chapter 201, 1983 General Session

73-2-11 Records -- Certified copies -- Evidence.

He shall keep on file in his office full and proper records of his work, including all field notes, computations and facts made or collected by him, all of which shall be part of the records of his office and the property of the state. All records, maps and papers recorded or filed in the office of the state engineer shall be open to the public during business hours. The office of the state engineer is hereby declared to be an office of public record, and none of the files, records or documents shall be removed therefrom, except in the custody of the state engineer or one of his deputies. Certified copies of any record or document shall be furnished by the state engineer on demand, upon payment of the reasonable cost of making the same, together with the legal fee for certification. Such copies shall be competent evidence, and shall have the same force and effect as the originals.

No Change Since 1953

73-2-12 Seal.

The state engineer shall have a seal which he shall affix to all certificates issued from his office, and he shall file a description and an impression of the same with the Division of Archives.

Amended by Chapter 67, 1984 General Session

73-2-13 Attorney general and county attorneys to counsel.

In all matters requiring legal advice in the performance of his duties and the prosecution or defense of any action growing out of the performance of his duties, the attorney general or county attorney of the county in which any legal question arises, shall be the legal advisers of the state engineer, and they are hereby required to perform any and all legal services required of them by him without other compensation than their salaries.

Amended by Chapter 186, 1971 General Session

73-2-14 Fees of state engineer -- Deposited as a dedicated credit.

- (1) The state engineer shall charge fees pursuant to Section 63J-1-504 for the following:
 - (a) applications to appropriate water;
 - (b) applications to temporarily appropriate water;
 - (c) applications for permanent or temporary change;
 - (d) applications for exchange;
 - (e) applications for an extension of time in which to resume use of water;
 - (f) applications to appropriate water, or make a permanent or temporary change, for use outside the state filed pursuant to Title 73, Chapter 3a, Water Exports;
 - (g) groundwater recovery permits;
 - (h) diligence claims for surface or underground water filed pursuant to Section 73-5-13;
 - (i) republication of notice to water users after amendment of application where required by this title;
 - (j) applications to segregate;
 - (k) requests for an extension of time in which to submit proof of appropriation not to exceed 14 years after the date of approval of the application;
 - (l) requests for an extension of time in which to submit proof of appropriation 14 years or more after the date of approval of the application;
 - (m) groundwater recharge permits;
 - (n) applications for a well driller's license, annual renewal of a well driller's license, and late annual renewal of a well driller's license;
 - (o) certification of copies;
 - (p) preparing copies of documents;
 - (q) reports of water right conveyance; and
 - (r) requests for a livestock water use certificate under Section 73-3-31.
- (2) Fees for the services specified in Subsections (1)(a) through (i) shall be based upon the rate of flow or volume of water. If it is proposed to appropriate by both direct flow and storage, the fee shall be based upon either the rate of flow or annual volume of water stored, whichever fee is greater.
- (3) Fees collected under this section:

- (a) shall be deposited in the General Fund as a dedicated credit to be used by the Division of Water Rights; and
- (b) may only be used by the Division of Water Rights to:
 - (i) meet the publication of notice requirements under this title;
 - (ii) process reports of water right conveyance;
 - (iii) process a request for a livestock water use certificate; and
 - (iv) hire an employee to assist with processing an application.

Amended by Chapter 183, 2009 General Session

73-2-15 Agreements with federal and state agencies -- Investigations, surveys or adjudications.

The state engineer, for and on behalf of the state of Utah, with the approval of the executive director of natural resources and the governor, is authorized to enter into agreements with any federal or state agency, subdivision or institution for cooperation in making snow surveys and investigations of both underground and surface water resources of the state. The state engineer is further authorized to cooperate with such agencies, subdivisions and institutions, with the approval of the executive director and the governor, for the investigation of flood and erosion control and for the adjudication of water rights. The expenses of such investigations, surveys and adjudications shall be divided between the cooperating parties upon an equitable basis.

Amended by Chapter 198, 1969 General Session

73-2-16 Arbitration -- Confirmation by district court.

The state engineer is authorized to conduct informal proceedings for the arbitration or settlement of disputes over water or the distribution thereof; provided all persons having an interest in the water in controversy shall in writing agree to any settlement effected thereby, and provided further that settlements shall be confirmed by decree of a court of competent jurisdiction.

No Change Since 1953

73-2-17 Authorization of cooperative investigations of groundwater resources.

The state engineer, for and on behalf of the state of Utah, with the approval of the executive director and the governor, is authorized and directed to enter into an agreement with the United States geological survey or any other federal or state agency, for cooperation in making investigations of the groundwater resources of the state and reporting thereon.

Amended by Chapter 198, 1969 General Session

73-2-20 Employees authorized to enter and cross lands -- Injuring monuments a crime.

- (1) In order to carry out the purposes of this title any person properly employed hereunder is authorized to enter and cross all lands within the state if no damage is done to private property.
- (2) It is a crime punishable under Section 73-2-27 for any person to knowingly or intentionally remove or injure any equipment, permanent marks, or monuments made or installed by any person properly employed under this title.

Amended by Chapter 215, 2005 General Session

73-2-22 Emergency flood powers -- Action to enforce orders -- Access rights to private and public property -- Injunctive relief against state engineer's decisions -- Judicial review provisions not applicable.

- (1) Whenever the state engineer, with approval of the chair of the Emergency Management Administration Council created in Section 53-2a-105, makes a written finding that any reservoir or stream has reached or will reach during the current water year a level far enough above average and in excess of capacity that public safety is or is likely to be endangered or that substantial property damage is occurring or is likely to occur, the state engineer shall have emergency powers until the danger to the public and property is abated.
- (2) Emergency powers shall consist of the authority to control stream flow and reservoir storage or release.
- (3) The state engineer must protect existing water rights to the maximum extent possible when exercising emergency powers.
- (4) Any action taken by the state engineer under this section shall be by written order.
- (5) If any person refuses or neglects to comply with any order of the state engineer issued pursuant to his emergency powers, the state engineer may bring action in the name of the state in the district court to enforce them.
- (6) In carrying out the state engineer's emergency powers, the state engineer shall have rights of access to private and public property.
- (7) Any person affected by a decision of the state engineer made under the state engineer's emergency powers shall have the right to seek injunctive relief, including temporary restraining orders and temporary injunctions in any district court of the county where that person resides.
- (8) No order of the state engineer shall be enjoined or set aside unless shown by clear and convincing evidence that an emergency does not in fact exist or that the order of the state engineer is arbitrary or capricious.
- (9) The provisions of Sections 73-3-14 and 73-3-15 shall not be applicable to any order of the state engineer issued pursuant to this section.

Amended by Chapter 348, 2016 General Session

73-2-23 Emergency powers of state engineer -- Multi-county flood mitigation activities -- Termination of assistance.

- (1) In addition to the emergency powers under Section 73-2-22, the state engineer shall assist counties in emergency flood mitigation on intercounty waterways when all the following conditions exist:
 - (a) two or more counties are involved;
 - (b) the flood mitigation activity has or may have adverse effect on the county;
 - (c) the county executive of that adversely impacted county requests the state engineer's involvement;
 - (d) the requesting county is providing an ongoing flood control program with jurisdiction-wide funding equivalent to .0004 per dollar of taxable value of taxable property; and
 - (e) the requesting county has established a flood control program through zoning.
- (2) Multi-county flood mitigation activities by the state engineer shall include:
 - (a) assisting the counties in emergency flood mitigation planning;
 - (b) furnishing engineering or other technical services;
 - (c) making recommendations in emergency situations, and, if requested, participating in making emergency flood control decisions; and
 - (d) in the event a decision is not reached, the final decision-making authority.

- (3) The assistance or involvement will cease when in the state engineer's judgment the flood conditions or potential for flooding subsides or when the county governing bodies of all affected counties request that the jurisdiction cease.

Amended by Chapter 227, 1993 General Session

73-2-23.1 Assistance of state engineer in management of flood waters.

In addition to his other flood management authority under Sections 73-2-22 and 73-2-23, the state engineer may assist in the management of flood waters pursuant to court judgments and decrees.

Enacted by Chapter 228, 1985 General Session

73-2-25 State engineer enforcement powers.

- (1) For purposes of this section, "initial order" means one of the following issued by the state engineer:
- (a) a notice of violation; or
 - (b) a cease and desist order.
- (2)
- (a) Except as provided in Subsection (2)(b), the state engineer may commence an enforcement action under this section if the state engineer finds that a person:
 - (i) is diverting, impounding, or using water for which no water right has been established;
 - (ii) is diverting, impounding, or using water in violation of an existing water right;
 - (iii) violates Section 73-5-4;
 - (iv) violates Section 73-5-9;
 - (v) violates a written distribution order from the state engineer;
 - (vi) violates Section 73-3-29;
 - (vii) violates a notice or order regarding dam safety issued under Chapter 5a, Dam Safety;
 - (viii) fails to submit a report required by Section 73-3-25; or
 - (ix) engages in well drilling without a license required by Section 73-3-25.
 - (b) The state engineer may not commence an enforcement action against a person under Subsection (2)(a)(i), if the person directly captures, or stores, precipitation on the surface of, or under, a parcel owned or leased by the person, including in a catch basin, storm drain pipe, swell, or pond, if the collection or storage:
 - (i) is consistent with local laws and ordinances;
 - (ii) does not interfere with an existing water right; and
 - (iii) is designed to slow, detain, or retain storm water or protect watersheds from pollution with the intention that the precipitation:
 - (A) absorbs into the ground or is released for discharge; and
 - (B) is not put to beneficial use.
 - (c) To commence an enforcement action under this section, the state engineer shall issue an initial order, which shall include:
 - (i) a description of the violation;
 - (ii) notice of any penalties to which a person may be subject under Section 73-2-26; and
 - (iii) notice that the state engineer may treat each day's violation of the provisions listed in Subsection (2)(a) as a separate violation under Subsection 73-2-26(1)(d).
 - (d) The state engineer's issuance and enforcement of an initial order is exempt from Title 63G, Chapter 4, Administrative Procedures Act.

- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state engineer shall make rules necessary to enforce an initial order, which shall include:
 - (a) provisions consistent with this section and Section 73-2-26 for enforcement of the initial order if a person to whom an initial order is issued fails to respond to the order or abate the violation;
 - (b) the right to a hearing, upon request by a person against whom an initial order is issued; and
 - (c) provisions for timely issuance of a final order after:
 - (i) the person to whom the initial order is issued fails to respond to the order or abate the violation; or
 - (ii) a hearing held under Subsection (3)(b).
- (4) A person may not intervene in an enforcement action commenced under this section.
- (5) After issuance of a final order under rules made pursuant to Subsection (3)(c), the state engineer shall serve a copy of the final order on the person against whom the order is issued by:
 - (a) personal service under Utah Rules of Civil Procedure 5; or
 - (b) certified mail.
- (6)
 - (a) The state engineer's final order may be reviewed by trial de novo by the district court in:
 - (i) Salt Lake County; or
 - (ii) the county where the violation occurred.
 - (b) A person shall file a petition for judicial review of the state engineer's final order issued under this section within 20 days from the day on which the final order was served on that person.
- (7) The state engineer may bring suit in a court of competent jurisdiction to enforce a final order issued under this section.
- (8) If the state engineer prevails in an action brought under Subsection (6)(b) or (7), the state may recover all court costs and a reasonable attorney fee.

Amended by Chapter 369, 2014 General Session

73-2-26 Administrative penalties.

- (1)
 - (a) As part of a final order issued under Section 73-2-25, the state engineer may order that a person to whom an order is issued:
 - (i) pay an administrative fine not to exceed:
 - (A) \$5,000 for each knowing violation; or
 - (B) \$1,000 for each violation that is not knowing;
 - (ii) replace up to 200% of water taken; and
 - (iii) be liable for any expense incurred by the state engineer or division in investigating and stopping the violation.
 - (b) The definition of "knowingly" under Subsection 76-2-103(2) shall apply to determinations under Subsection (1)(a)(i).
 - (c) The penalties described in Subsection (1)(a) shall be in addition to:
 - (i) any criminal penalty established for a violation described in Subsection (1); and
 - (ii) any private right of action.
 - (d)
 - (i) Each day of a continuing violation of the provisions described in Subsection 73-2-25(2)(a) or an initial or final order issued under Section 73-2-25 is a separate violation.

- (ii) A penalty may not be imposed for a violation of the provisions listed in Subsection 73-2-25(2)(a) or an initial or a final order issued under Section 73-2-25 for a violation occurring more than 12 months before the day on which a notice of violation is issued.
- (e) Separate violations under Subsection (1)(d) may be consolidated for resolution in one enforcement proceeding under Section 73-2-25.
- (f) The state engineer has discretion to pursue an administrative fine, order requiring replacement, or both.
- (2) Before imposing a fine or ordering replacement under Subsection (1), the state engineer shall consider:
 - (a) the value or quantity of water unlawfully taken, including the cost or difficulty of replacing the water;
 - (b) the gravity of the violation, including the economic injury or impact to others;
 - (c) whether the person subject to fine or replacement attempted to comply with the state engineer's orders; and
 - (d) the violator's economic benefit from the violation.
- (3)
 - (a) The state engineer may require that the water unlawfully taken be replaced after:
 - (i) a person fails to request judicial review of a final order issued under Section 73-2-25; or
 - (ii) the completion of judicial review, including any appeals.
 - (b) The state engineer's order shall require that replacement of water begin within one year of the day on which:
 - (i) the time period for requesting judicial review of a final order issued under Section 73-2-25 expires without a person requesting judicial review of the final order; or
 - (ii) the completion of judicial review, including any appeals.
- (4) Water replaced under Subsection (3) shall be taken from water that the person subject to the order requiring replacement would be entitled to use during the replacement period.
- (5)
 - (a) If the state engineer issues an order requiring replacement, a copy of the order shall be placed in the Division of Water Rights' water rights records.
 - (b) The order requiring replacement shall constitute a lien upon the water right affected if the state engineer files a notice of lien in the office of the county recorder in the county where the place of use of the water right is located.
 - (c) A notice of lien under Subsection (5)(b) shall include a legal description of the place of use of the water right.
- (6) Any money collected under this section shall be deposited into the General Fund.

Enacted by Chapter 33, 2005 General Session

73-2-27 Criminal penalties.

- (1) This section applies to offenses committed under:
 - (a) Section 73-1-14;
 - (b) Section 73-1-15;
 - (c) Section 73-2-20;
 - (d) Section 73-3-3;
 - (e) Section 73-3-26;
 - (f) Section 73-3-29;
 - (g) Section 73-5-9;
 - (h) Section 76-10-201;

- (i) Section 76-10-202; and
- (j) Section 76-10-203.
- (2) Under circumstances not amounting to an offense with a greater penalty under Subsection 76-6-106(2)(b)(ii) or Section 76-6-404, violation of a provision listed in Subsection (1) is punishable:
 - (a) as a felony of the third degree if:
 - (i) the value of the water diverted or property damaged or taken is \$2,500 or greater; and
 - (ii) the person violating the provision has previously been convicted of violating the same provision;
 - (b) as a class A misdemeanor if:
 - (i) the value of the water diverted or property damaged or taken is \$2,500 or greater; or
 - (ii) the person violating the provision has previously been convicted of violating the same provision; or
 - (c) as a class B misdemeanor if Subsection (2)(a) or (b) does not apply.

Amended by Chapter 245, 2015 General Session

Amended by Chapter 249, 2015 General Session

73-2-28 Costs and fees in civil actions.

The prevailing party in a civil action is entitled to collect reasonable costs and attorney fees, if that action is brought:

- (1) under Section 73-1-14;
- (2) under Section 73-1-15;
- (3) for injuries caused by a diversion of water for which no water right has been established;
- (4) for injuries caused by a diversion of water in violation of an existing water right; or
- (5) for injuries caused by a violation of a written distribution order from the state engineer.

Enacted by Chapter 33, 2005 General Session

73-2-29 Agreement with another state -- Regulation, distribution, and administration of interstate water.

- (1) The state engineer, after receiving approval from the executive director of the Department of Natural Resources and the governor, may enter into an agreement with another state to regulate, distribute, and administer the water from an interstate surface water source that is not otherwise subject to an interstate compact.
- (2) The state engineer may coordinate with another state to implement:
 - (a) the terms of an agreement entered into according to Subsection (1); and
 - (b) an interstate compact that regulates, distributes, or administers an interstate surface water source.

Enacted by Chapter 67, 2008 General Session